

ADVISORY OPINION 1998-015

Any advisory opinion rendered by the Registry under subsection (1) or (2) of this section may be relied upon only by the person or committee involved in the specific transaction or activity with respect to which the advisory opinion is rendered. KRS 121.135(4).

January 6, 1999

Hon. William E. Doll, Jr.
Jackson & Kelly
175 East Main Street
P.O. Box 2150
Lexington, Kentucky 40595-2150

Dear Mr. Doll:

This is in response to your letter dated December 9, 1998, requesting an advisory opinion regarding the establishment of payroll deductions for employees of various beer wholesalers that represent the membership of the Kentucky Beer Wholesalers Association (hereinafter the "KBWA"). KBWA sponsors a separate political action committee ("PAC"), the KBWA PAC. Your letter correctly characterizes KBWA PAC as a registered permanent committee, the contributors for which are generally the owners and employees of beer wholesalers in Kentucky. Your questions regarding payroll deductions of employees of wholesalers and the transmittal of those withholdings to the KBWA PAC may be stated as follows:

- (1) May the beer wholesalers who are members of KBWA institute a voluntary payroll deduction process for employees to contribute to KBWA PAC?
- (2) May the payroll deductions collected by the beer wholesalers, which are corporations, be transmitted by corporate check to KBWA PAC with a detailed report, including a list of each participating employee, their social security number and the amount of the employee's contribution for the period and in the aggregate? To ensure no corporate subsidies for this program, KBWA PAC will reimburse each wholesaler for the overhead costs for the program.

While payroll deductions, as a means of making political contributions to a political committee, are not specifically prohibited under KRS Chapter 121, other provisions do affect the manner of such a program. KRS 121.310 prohibits the coercion of an employee to influence his or her vote. KRS 121.035 prohibits a corporation from distributing funds or "in any way handl[ing] any money, funds or other thing of value that belongs to or has been or is being furnished by any such corporation or any officer, agent, attorney or employee thereof to be used or employed in any way for the purpose of aiding, assisting, or advancing any candidate for public office." Further, KRS 121.025 prohibits a person from accepting employment and compensation with the agreement that he or she will make corporate contributions.

According to your letter, employees would be free to elect or not elect payroll deductions. Your advise the Registry that the KBWA PAC would visit various beer wholesalers to explain

the program and the committee to the employees. Employees could then elect to withhold funds from their paychecks to be contributed to KBWA PAC. You state that the KBWA PAC will clearly explain to employees that their decision to contribute or not contribute will have no effect on their employment.

In Toledo Area AFL-CIO Council v. Pizza, 154 F.3d 307 (6th Cir. 1998), the Court of Appeals for the Sixth Circuit held that the sections of the Ohio Campaign Reform Act that imposed strict disclaimer provisions on and limited the regularity of solicitations for political contributions were unconstitutional. The court upheld its prior decision in Michigan State AFL-CIO v. Miller, 103 F.3d 1240 (6th Cir. 1998), in which it held constitutional, under less exacting scrutiny, a statute requiring corporations and labor unions to obtain affirmative consent annually from employees making political contributions through a checkoff system. Toledo Area, 154 F.3d at 314. Therefore, the Sixth Circuit has upheld state regulation of payroll deduction programs to insure that political contributions deducted are voluntary and that employees are aware of their right to refrain from contributing. Id. at 315. However, the state must insure these protections in a manner that does not “[burden] every act of solicitation with compelled speech.” Id.

Therefore, provided KBWA PAC explains to employees, at least annually, that their decision to contribute is voluntary and will have no effect on their employment and provided the plan requires the affirmative consent of participating employees and may be terminated at the election of the employee, there is no violation of KRS 121.310.

Further, as corporate payroll funds are distributed as compensation to an employee, the funds are the property of the employee upon issue and may be contributed by the employee to KBWA PAC upon the employee’s election. Therefore, provided the payroll deduction is the voluntary election of an employee, there is no violation of the relevant provisions of KRS 121.025 and KRS 121.035.

Regarding the transmission of payroll deduction funds from the beer wholesalers to the KBWA PAC, the method proposed by your letter would not violate KRS 121.025, as the funds transferred by corporate check may be attributed to payroll funds that are the property of the contributing employees, not the corporation. Further, by reimbursing each wholesaler for the overhead costs of the payroll deduction program, the KBWA PAC may avoid accepting a corporate subsidy under KRS 121.150(22).

Based on the foregoing, the Registry confirms that the specific conduct proposed and described by you letter complies with Kentucky campaign finance law. If you have any additional questions, please do not hesitate to contact the Registry staff.

Sincerely,

Rosemary F. Center
General Counsel